

Affirmed and Opinion filed August 9, 2001.



In The

Fourteenth Court of Appeals

NO. 14-99-01230-CR

HERBERT LEE WILLIAMS, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 178th District Court
Harris County, Texas
Trial Court Cause No. 807,883**

OPINION

A jury found appellant, Herbert Lee Williams, guilty of the felony offense of aggravated sexual assault and assessed his punishment at confinement in the Institutional Division of the Texas Department of Criminal Justice for twenty-two years. In four points of error, appellant contends: (1) the trial court's exclusion of evidence violated the Sixth Amendment to the United States Constitution; (2) he was denied a fair and impartial trial; and (3) the evidence is legally and factually insufficient to support his conviction. We affirm.

Arriving home from work, the complainant entered her apartment, telephoned her daughter on a cordless phone, and walked into her bedroom. The complainant immediately noticed that her portable stereo, a drawer, and box of rolled coins were sitting on her bed. Startled by the sight of these personal items on the bed, the complainant asked her daughter why she had moved the property. The complainant's daughter replied that she had not moved any of her belongings. Realizing the precariousness of her position, the complainant told her daughter that someone had either been in their apartment or was currently in their apartment. She had no sooner uttered these words than the appellant rushed from the bathroom with a towel over his face. Appellant wrapped the towel around the complainant's throat, snatched the phone out of her hand, and pushed her down upon the bed. Appellant then proceeded to choke and sexually assault the victim.

The complainant's daughter heard her mother scream before the line went dead. The complainant's daughter immediately called 911 to report a burglary in progress. The police arrived and knocked on the front door. Receiving no answer, the police surrounded the apartment and noticed that a back window had been broken. After persuading appellant that she would tell the police he was her friend, the complainant opened the front door and fled. She told the police she had been sexually assaulted and that the defendant was still in her apartment. Thereafter, appellant surrendered to police. He was searched, and a knife was found on his person.

At the time of trial, the complainant stated in a hearing conducted outside the presence of the jury that she had retained a lawyer and was contemplating a civil suit against the apartment complex. Appellant attempted to elicit this testimony in front of the jury, but was prevented from doing so when the court sustained the State's relevancy objection. In his first point of error, appellant contends the trial court's ruling infringed upon the confrontation clause of the Sixth Amendment to the United States Constitution. Appellant claims the testimony would have helped establish the complainant's motive to lie or fabricate testimony in the criminal case to ultimately aid her in her civil suit.

“A successful showing of bias on the part of a witness would have a tendency to make the facts to which he testified less probable in the eyes of the jury than it would be without such testimony.” *United States v. Abel*, 469 U.S. 45, 51 (1984). Thus, evidence of bias is always relevant. See TEX. R. EVID. 401. Not only is evidence of bias logically relevant, its exclusion implicates the confrontation clause of the Sixth Amendment to the United States Constitution. *Delaware v. Van Arsdall*, 475 U.S. 673, 678 (1986). Thus, the Sixth Amendment right of a criminal defendant “to be confronted with the witnesses against him” includes the right to impeach credibility through cross-examination. *Davis v. Alaska*, 415 U.S. 308, 315-16 (1974).

Bias may arise in a variety of forms. The bias may, for example, spring from a relationship between the witness and a party to the suit. It may be the product of racial hatred, affiliation with the same or rival organizations, or a previous quarrel. Bias may also be spawned by an interest in the prosecution. Where a civil action depends to some degree upon the attainment of a criminal conviction, the potential bias of the witness is manifest. For example, where the victim of a crime has filed a civil suit *against the defendant* growing out of the same incident, testimony regarding the suit is admissible to show the witness’ interest and bias. *Cox v. State*, 523 S.W.2d 695, 700 (Tex. Crim. App. 1975). However, where the suit is *against a third party*, its relevance depends upon the particular circumstances regarding the nature of the suit. The Court of Criminal Appeals has identified at least four factors touching on the relevance of civil suits: (1) is the criminal defendant a contemplated party to the lawsuit; (2) did a relationship exist between the criminal defendant and the third party, e.g., was the defendant employed by the third party; (3) is there a fact issue regarding the occurrence of the crime; (4) is there any other reason to believe the civil suit might cause the witness to be biased. *Hoyos v. State*, 982 S.W.2d 419, 421 (Tex. Crim. App. 1998).

Here, appellant made a proffer of proof outside the jury’s presence in which the complainant testified that although she had not yet filed a suit against the apartment complex, she intended to do so for failing to maintain proper security. There is nothing

in the record before us to suggest the complainant was contemplating a suit against appellant. Moreover, there is no evidence appellant had a relationship with the apartment complex. However, there is a fact issue regarding the occurrence of the offense alleged in the indictment. Appellant admitted to being in the complainant's apartment, but denied sexually assaulting her. Finally, we conclude that proof of a violent sexual assault, as opposed to a burglary, could provide a basis for an enhanced recovery in a civil suit against the apartment complex.

Because a witness' bias is always relevant as discrediting the witness and affecting the weight of his testimony, we have already observed that the exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination. *Davis*, 415 U.S. at 316-17. Although the trial judge retains the traditional discretion to limit the scope of cross-examination, discretion in the area of bias evidence becomes operative only after the constitutionally required threshold level of inquiry has been afforded the defendant. *United States v. Tracey*, 675 F.2d 433, 437 (1st Cir. 1982), *cert. denied*, 469 U.S. 1109 (1985). In the usual case, if the jury had sufficient other information before it, without the excluded evidence, to make a discriminating appraisal of the possible biases and motivations of the witness, the constitutional "minimum threshold" is met. *United States v. Anderson*, 139 F.3d 291, 302 (1st Cir.), *cert. denied*, 525 U.S. 866 (1998). After considering the *Hoyos* factors and the record before us, we find the trial court erred in excluding the proffered testimony regarding the complainant's contemplated suit.

When, as here, the record demonstrates constitutional error, we must reverse the judgment of conviction unless we find beyond a reasonable doubt that the error did not contribute to the conviction. TEX. R. APP. P. 44.2(a). Appellant admitted unlawfully entering the complainant's apartment, but testified that he did not sexually assault her. Thus, there was a disputed fact issue regarding the assault, and evidence of the complainant's contemplated civil suit could, in theory, have diminished the complainant's credibility. However, the record contains so much corroborative evidence confirming the

truth of the complainant's testimony, it is exceedingly difficult to envision any fact finder having doubts about her credibility in regard to the assault.

It is undisputed that the complainant discovered appellant in her apartment. The complainant's daughter heard her mother scream before the telephone line was disconnected. The complainant's daughter immediately called the police. Nothing prevented appellant from taking flight, but he was still inside the apartment when police arrived. Appellant's continued presence on the premises is consistent with the complainant's testimony that appellant raped her vaginally and anally before the police arrived. After the police knocked on the front door and surrounded the apartment, they observed a very shaken complainant flee from the apartment and collapse on the sidewalk. The complainant immediately reported that she had been raped. A medical examination conducted shortly thereafter revealed bruising and tearing of the complainant's anus consistent with a violent assault. Considering the record as a whole, we find beyond any reasonable doubt that the improper exclusion of the proffered evidence of bias did not contribute to appellant's conviction. Accordingly, appellant's first point of error is overruled.

In his second point of error, appellant contends the trial court erred by overruling his motion for a mistrial. While being cross-examined, the complainant fainted and fell to the floor. The trial court removed the jury, and emergency medical aid was summoned to the courtroom. The complainant was then taken to a nearby hospital. Immediately thereafter, appellant's counsel moved for a mistrial arguing that the complainant's collapse irreparably prejudiced the jury against appellant. The trial court denied the motion. Appellant's counsel then requested a jury instruction. Once the trial resumed, the court instructed the jury not to let the complainant's collapse impact their assessment of the complainant's credibility. After the instruction, appellant's counsel, again, requested that the trial court grant a mistrial. The trial court, again, denied the motion. On appeal, appellant contends the admonishment was insufficient to cure the prejudicial effect of the complainant's collapse. Appellant argues that the collapse, coupled with appellant's

insistence that he did not assault the complainant and the “close nature” of the testimony, denied him a fair and impartial trial.

We review a trial court’s grant or denial of a motion for mistrial for an abuse of discretion. *Thomas v. State*, 915 S.W.2d 597, 601 (Tex. App.—Houston [14 th Dist.] 1996, pet. ref’d). Declaration of a mistrial is an extraordinary remedy and a trial court is only allowed to grant a mistrial when it is apparent that an objectionable event at trial is so emotionally inflammatory that curative instructions are not likely to prevent the jury from being unfairly prejudiced against the defendant. *Bauder v. State*, 921 S.W.2d 696, 698 (Tex. Crim. App. 1996). Consequently, we must largely defer to the trial court’s evaluation of the emotional impact the complainant’s collapse on the jury.

Here, the complainant was determined by medical personnel to be suffering from hyperglycemia. The trial judge informed the jury that the complainant’s collapse was due to a combination of a warm courtroom and the complainant’s hyperglycemia. He further informed the jury that the complainant was being treated at a hospital as a precautionary measure. Finally, he instructed the jurors not to allow themselves to be swayed by sympathy when assessing the complainant’s credibility. We presume that judicial admonishments to the jury are efficacious. *Id.* Accordingly, we overrule appellant’s second point of error.

Appellant’s third and fourth points of error contend that the evidence was legally and factually insufficient to support his conviction. The underlying focus of appellant’s legal and factual sufficiency challenges is his argument that we should disregard the complainant’s incriminating testimony because of the absence of medical evidence confirming the complainant’s assertion that she was vaginally penetrated by appellant.

Legal sufficiency is the constitutional minimum required by the Due Process Clause of the Fourteenth Amendment to sustain a criminal conviction. *Jackson v. Virginia*, 443 U.S. 307, 315-16 (1979). The standard for reviewing a legal sufficiency challenge is whether any rational trier of fact could have found the essential elements of the offense

beyond a reasonable doubt. *Jackson*, 443 U.S. at 320; *Johnson v. State*, 871 S.W.2d 183, 186 (Tex. Crim. App.1993). The evidence is examined in the light most favorable to the jury's verdict. *Johnson*, 871 S.W.2d at 186. When conducting a legal sufficiency review, we are required to defer to the jury's determinations on the credibility of witnesses and the weight to be given to their testimony. TEX. CODE CRIM. PROC. ANN. art. 38.04 (Vernon 1979); *Penagraph v. State*, 623 S.W.2d 341, 343 (Tex. Crim. App. [Panel Op.] 1981). It is for the jury as trier of fact to resolve any conflicts and inconsistencies in the evidence. *Bowden v. State*, 628 S.W.2d 782, 784 (Tex. Crim. App.1982).

When conducting a factual sufficiency review, we must be careful not to intrude on the jury's role as the sole judge of the credibility of the witnesses or the weight to be given their testimony. *Santellan v. State*, 939 S.W.2d 155, 164 (Tex. Crim. App.1997). Thus, our factual sufficiency review begins with the presumption that the evidence is legally sufficient. *Jones v. State*, 944 S.W.2d 642, 647 (Tex. Crim. App.1996). We must look to all the evidence "without the prism of 'in the light most favorable to the verdict.'" *Clewis v. State*, 922 S.W.2d 126, 129 (Tex. Crim. App.1996). We may set aside the verdict on factual sufficiency grounds only when that verdict is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. *Clewis*, 922 S.W.2d at 134-135.

Appellant was convicted of aggravated sexual assault pursuant to section 22.021 of the Texas Penal Code. The State was required to establish, beyond a reasonable doubt, that appellant intentionally and knowingly penetrated the complainant's sexual organ with his sexual organ, without her consent, by the use of force and the threat of violence. TEX. PEN. CODE ANN. § 22.021 (Vernon 1994). The State presented the jury with evidence that: (1) appellant burglarized the complainant's residence; (2) appellant placed the complainant in fear for her life by garroting her with a towel and repeatedly threatening to end her life; and (3) appellant intentionally and knowingly penetrated the complainant vaginally and anally without her consent. Accordingly, we reject appellant's assertion that we should dissect the record and make our own determination regarding the credibility of

the complainant's testimony. Moreover, appellant's brief wholly ignores the medical evidence that fully supports appellant's claim that she was sodomized. Applying the appropriate standards of review, we find the evidence legally and factually sufficient to support appellant's conviction. Accordingly, we overrule appellant's third and fourth points of error.

We affirm the decision of the trial court.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed August 9, 2001.

Panel consists of Justices Anderson, Hudson, and Seymore.

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